

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

DONALD L. COGAR,

Plaintiff,

v.

**Civil Action No. 3:04-CV-112
(Judge Bailey)**

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert [Doc. 24] dated July 31, 2007, to which neither party filed objections. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate, and under these circumstances, the parties' right to *de novo* review is waived. **See *Webb v. Califano***, 468 F. Supp. 825 (E.D. Cal. 1979).

Accordingly, because no objections have been filed this report and recommendation will be reviewed for clear error. Upon review of the R & R and the record, it is the opinion of this Court that the Magistrate Judge's Report and Recommendation [Doc. 24] should be, and is, hereby **ORDERED ADOPTED**.

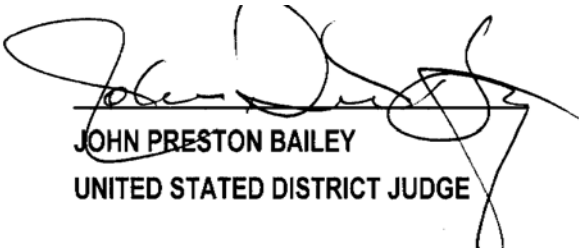
For reasons more fully stated in the Report and Recommendation of United States Magistrate Judge James E. Seibert [Doc. 24], the Court **ORDERS** that Claimant's Motion

for Summary Judgment [Doc. 20] be **GRANTED** and the case be **REMANDED** to the Commissioner because the ALJ's hypothetical question to the Vocational Expert did not incorporate all of Claimant's limitations. Further, the Commissioner's Motion for Summary Judgment [Doc. 21] is **DENIED** for the same reasons set forth in the Magistrate Judge's R & R [Doc. 24].

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to all counsel of record.

DATED: September 12, 2007.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE